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JAN 31 PM 1:15

U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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11

12 **UNITED STATES DISTRICT COURT**  
 13 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

14

15 KATHLEEN HANNI, individually and on  
 16 behalf of all others similarly situated,

17 Plaintiff,

18 vs.

19 AMERICAN AIRLINES, INC., and DOES 1  
 20 through 20, inclusive,

21 Defendants.

CASE NO.

BZ

22 **DECLARATION OF JAMES  
 23 WAGSTAFFE IN SUPPORT OF  
 24 DEFENDANT AMERICAN AIRLINES,  
 25 INC.'S NOTICE OF REMOVAL**

26 I, JAMES M. WAGSTAFFE, hereby declare:

27 1. I am a licensed attorney and partner with the law firm of Kerr & Wagstaffe LLP  
 28 located at 100 Spear St #1800, San Francisco, CA 94105. I am an active member in good standing  
 1 of the State Bar of California, and have been since 1980. I have personal knowledge of the  
 2 matters set forth in this declaration, except for those facts which are alleged on information and  
 3 belief, and as to those facts, I believe them to be true. I could and would testify competently  
 4 thereto if called as a witness.

25 2. I have been retained in this case by attorneys with the Cooper, White & Cooper  
 26 LLP law firm, who are counsel for defendant American Airlines, Inc. ("AA"), to review Plaintiff's  
 27 class action complaint for False Imprisonment, Intentional Infliction of Emotional Distress,  
 28 Negligence, Breach of Contract, and Deceit/Fraud ("Complaint"), filed on or about December 28,

594245.1

Declaration of James Wagstaffe in Support of Defendant's Notice of Removal

1 2007 in Napa Superior Court, Case No. 26-40576, and to evaluate certain claims made in the  
 2 Complaint. I have also been asked to render opinions related to Plaintiff's claims. In particular, I  
 3 have been asked to render an opinion as to whether the nature of Plaintiff's claims, including  
 4 Plaintiff's claim for attorneys fees and expenses, in all reasonable probability would exceed the  
 5 amount of \$75,000.00 (SEVENTY-FIVE THOUSAND DOLLARS), in light of the Plaintiff's  
 6 claims, the complexity of the case as plead, the range of damages available should Plaintiff  
 7 prevail, and the nature of the attorneys fees and expenses that Plaintiff's counsel would have to  
 8 incur in pursuit of such claims.

9       3.     My specific legal qualifications and experience are set forth on my current resume,  
 10 which is attached to this affidavit as Exhibit A and incorporated by this reference.

11       4.     Based on my professional experience and judgment, it is my opinion that: (a)  
 12 Plaintiff's claims for damages and for attorneys fees and expenses in all reasonable probability will  
 13 exceed the amount of Seventy-Five Thousand Dollars (\$75,000.00 ) for pursuit of Plaintiff's  
 14 individual claims alone, even if this case is not certified as a class action; and (b) in all reasonable  
 15 probability, Plaintiff will incur more than Seventy-Five Thousand Dollars (\$75,000.00) in  
 16 attorneys fees even prior to the Court's determination whether this case should be certified as a  
 17 class action.

18       5.     In reaching these opinions I have reviewed the following: the allegations contained  
 19 in Plaintiff's Complaint; the relevant California Rules of Civil Procedure pertinent to Plaintiff's  
 20 claims in the Complaint; reported cases decided under those relevant California procedural  
 21 statutes; rulings from the U.S. Supreme Court and the Ninth Circuit Court of Appeals, which have  
 22 concluded that when determining the amount in controversy both punitive damages and attorneys  
 23 fees are considered in determining the jurisdictional amount. *See Bell v. Preferred Life Assurance*  
 24 *Society of Montgomery, Ala.*, 320 U.S. 238, 240 (1943) (punitive damages); *Galt G/S v. JSS*  
 25 *Scandinavia*, 142 F.3d 1150, 1155-56 (9<sup>th</sup> Cir. 1998) (attorneys fees).

27       6.     In reaching these opinions, I have also relied on my professional experience of  
 28

1 more than twenty-seven years as a commercial litigator in the State of California as set forth in  
 2 part in Exhibit A to this affidavit. I have extensive experience in litigating putative class action  
 3 cases involving all types of claims and allegations.

4       7.     Based upon my professional experience and judgment, I anticipate that counsel for  
 5 Plaintiff will undertake and incur the following time and resources investments in prosecuting the  
 6 Complaint, up to but not including trial and trial preparation:

7           a. Up to thirty (30) hours in performing a thorough pre-suit investigation and  
 8 drafting the Complaint.

9           b. Up to fifty (50) hours in responding to a motion to dismiss the Complaint on  
 10 jurisdictional grounds, in particular that the claims are preempted by federal law and/or primary  
 11 jurisdiction rests with an administrative agency and, therefore, the action should be dismissed for  
 12 lack of subject-matter jurisdiction.

13           c. Up to forty (40) hours in responding to other dispositive motions, including those  
 14 based upon affirmative defenses, e.g. waiver (based upon Plaintiff's failure to comply with the  
 15 provisions of the Conditions of Carriage), and based upon failure to establish a contract breach,  
 16 e.g. the Complaint references the provisions of the contract "upon information and belief," see ¶  
 17 57, and further proof of the terms of the allegedly breached contract will be limited by the doctrine  
 18 of parole evidence, which is a substantive rule of law.

19           d. Up to one hundred (100) hours taking depositions of various personnel to  
 20 support the claims. Even assuming the court does not grant leave to exceed the FRCP 30(a)(2)(A)  
 21 limit of ten depositions, I would expect Plaintiff's counsel to depose up to ten (10) individuals,  
 22 including: FAA ground controller(s), FAA air controllers, management at the Austin, Texas  
 23 airport, American Airlines personnel allegedly causing delays, representatives of other airlines and  
 24 airports, and, American Airlines' captain, crew, and operators involved in the December 29, 2006  
 25 flight.

26           e. Up to thirty-five (35) hours preparing for the taking of depositions.

27           f. Up to sixteen (16) hours attending and defending the depositions of Plaintiff and  
 28 one testifying expert retained by Plaintiff's counsel.

1 g. Up to ten (10) hours preparing for the depositions of Plaintiff and consulting  
2 with expert(s).

3 h. Up to thirty (30) hours preparing and propounding various written discovery  
4 requests.

5 i. Up to thirty (30) hours preparing responses to written discovery requests.

6 j. Up to twenty (20) hours resolving potential discovery issues, including filing and  
7 responding to motions relating to discovery issues.

8. I am not familiar with Plaintiff's counsel, but would conservatively expect  
9 Plaintiff's counsel to request an hourly rate of \$350 per hour given his years of practice and the  
10 complexity of the case. Plaintiff's counsel will almost certainly expend at a minimum 300 hours  
11 prior to any class certification hearing in this matter. Therefore without regard to recoverability,  
12 reasonableness, or necessity in any ultimate award of attorneys fees to Plaintiff in my opinion, it is  
13 beyond question Plaintiff's "claim" for attorneys fees will exceed \$75,000.00 prior to any class  
14 determination in this case. Plaintiff's claim for attorneys fees will exceed that amount at the  
15 conclusion of the case, even if class certification is denied and only Plaintiff's individual claims  
16 are litigated.

17 I declare the foregoing to be true under penalty of perjury. This declaration was executed  
18 at San Francisco, California on January 31, 2008.

James M. Wagstaffe

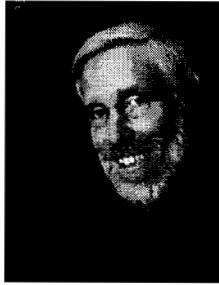


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H. Sinclair Kerr, Jr.  
James M. Wagstaffe  
Michael von Loewenfeldt  
Ivo Labar  
Keith K. Fong  
Holly Hogan  
Michael Ng  
Adrian J. Sawyer

## Attorneys

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### James M. Wagstaffe

Jim, partner and co-founder, handles diverse litigation emphasizing professional and governmental representation, business litigation, First Amendment matters, and media cases. He represents individual and corporate clients in federal and state actions, and specializes in the firm's intellectual property and First Amendment practice areas.

#### Educational Background

In 1977, Jim received his B.A. degree with distinction from Stanford University. In 1980, Jim received his J.D. degree from the University of California, Hastings College of the Law (San Francisco), where he was honored for his achievements in moot court competition.

Following law school, Jim served as a judicial law clerk for the Honorable Spencer Williams in the United States District Court for the Northern District of California.

#### Super Lawyer

In December 1999, California Lawyer named Jim as one of its Top Twenty Lawyers of the Year. Jim also was added to the 2007 list of Northern California Super Lawyers, an honor given to the top 5% of attorneys practicing in Northern California.

#### Federal Civil Procedure Expert

Jim is a nationally-known speaker on federal civil procedure and is considered to be an authority on that subject. He is an instructor at the Federal Judicial Center's "New Judges Workshops," educating newly-appointed federal judges on all aspects of federal procedure. Jim's numerous publications include the widely-used *Federal Civil Procedure Before Trial (TRG 2005 - Three Volumes)*, *Removal and Remand; Commencing Actions in Federal Court*, *"Much Ado About Doe Defendants,"* 5 *Cal. Lawyer*; and *"Life After Remand,"* *Federal Litigation*. He also co-authored the Summary of California Ethics Rules. Jim is a frequent lecturer and moderator for programs on federal civil procedure presented by the *Rutter Group*.

#### Important Cases, Important Results

Jim's cases reflect the depth of his experience and ability to obtain results, particularly in complex and novel areas of the law. For example, he represented the State Bar of California before the California Supreme Court. *Warden v. State Bar of California*, 21 Cal. 4th 628 (1999). In that case, he successfully defended the State Bar against a constitutional challenge to the Bar's

requirements for continuing legal education for lawyers in California. Jim also successfully defended the State Bar in separate federal and state court lawsuits that challenged the constitutionality of the California Legislature's decision to allow only California-resident lawyers to vote and sit in elections for the State Bar Board of Governors. *Hoffman v. State Bar of California*, 113 Cal. App. 4th 630 (2003).

Jim also is one of the most sought after First Amendment lawyers in the country. His First Amendment and media experience is exemplified by his successful defense of The New Yorker Magazine in the libel trial *Masson v. New Yorker*, 832 F. Supp. 1350 (N.D. Cal. 1993), aff'd 85 F.3d 1394 (9th Cir. 1996) held in the U.S. District Court for the Northern District of California. He has successfully defended numerous broadcasters, newspapers, and magazines at trial, on summary judgment, and under California's Anti-SLAPP (Strategic Lawsuits Against Public Participation) statute.

Recently, Jim represented sex.com in a dispute with Verisign/Network Solutions over their mishandling of the famous domain name. He successfully obtained a sweeping victory from the Ninth Circuit Court of Appeals in a landmark decision with far reaching implications in all areas of Internet infrastructure. *Kremen v. Cohen*, 337 F.3d 1024 (9th Cir. 2003).

#### **Author, Speaker, Professor**

In addition to his legal publications Mr. Wagstaffe also has authored *Romancing the Room* (Three Rivers Press), an adroit, step-by-step guide to public speaking. Most recently, Mr. Wagstaffe was a contributing author to *The Expert's Guide to 100 Things Everyone Should Know How to Do* alongside fellow contributors Donald Trump, Larry King, and Ira Glass, among others. Jim is an in-demand speaker for both private and public speaking engagements.

Sharing knowledge and experience within the legal community is core to the firm's belief system. To further reinforce this belief, Jim is committed to teaching graduate and undergraduate level students. Jim is an adjunct professor in constitutional law and civil procedure at Hastings College of the Law and in Media Law at San Francisco State University. He has also taught the Practical Speech Communication course at Stanford University for over 25 years.

#### **Awards and Recognition**

In addition to the previously mentioned honors, in 2004, Jim shared a Peabody Award for his copyright contributions to the PBS documentary, *The DNA Files*.

In 1991, he received the prestigious James Madison Freedom of Information Award from The Society of Professional Journalists.

#### **Published and Westlaw Cases**

[Click here to see all cases.](#)

#### **Personal Information**

As a native of the Bay area, Jim lives in Burlingame with his wife, Karen and their four children.

**Contact:**  
wagstaffe@kerrwagstaffe.com

Kerr & Wagstaffe LLP, 100 Spear Street, Suite 1800, San Francisco, CA 94105

TEL: 415.371.8500 FAX: 415.371.0500

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## PROOF OF SERVICE

I am a resident of the State of California. I am over the age of eighteen years, and not a party to this action. My business address is 201 California Street, Seventeenth Floor, San Francisco, California 94111-5002.

On January 31, 2008, I served the following document(s):

**DECLARATION OF JAMES WAGSTAFFE IN SUPPORT OF DEFENDANT  
AMERICAN AIRLINES, INC.'S NOTICE OF REMOVAL**

on each of the parties listed below at the following addresses:

Law Offices of Paul S. Hudson P.C.  
4411 Bee Ridge Road #274  
Sarasota, Florida 34233

David G. Ramos, Esq.  
Law Offices of David G. Ramos  
3266 Villa Lane  
Napa, California 94558

**BY FEDEX:** On the date specified above in San Francisco County, as to each of the parties identified in the above service list, I deposited in a box or other facility regularly maintained by the overnight service carrier, or delivered to a courier or driver authorized by said overnight service carrier to receive documents on its behalf, a true copy of the above-referenced document(s) in a sealed envelope or package designated by the overnight service carrier, with delivery fees paid or provided for.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 31, 2008, at San Francisco, California.

  
Melissa Batchelder